

S.B. Civil Misc. Appeal No.1231/2006

Ram Singh and others.
vs.
Bhikam Chand and another.

Date : 1.9.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. J Chopra, for the appellants.

Mr. A Patel, for the respondents.

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At the request of learned counsel for the parties, this appeal is finally heard and decided.

The appellant is aggrieved against the order of the trial court dated 22.4.2006 by which the appellants have been restrained from alienating the property.

According to learned counsel for the appellants, the court below committed serious error in observing that no reply was filed by the defendants no.1 to 3 and 5 to 7 despite service of notice and nobody appeared on their behalf whereas, in fact, reply was filed by all the defendants. It is also submitted that the suit was filed after inordinate delay and in a suit for specific performance of contract in such a situation, the trial court should not have allowed the injunction application. It is also submitted that the plaintiffs have no prima-

facie case, even then, injunction has been granted.

Learned counsel for the respondents submitted that in fact, all the defendants filed one written statement and one reply to the injunction application. The written statement was filed after statutory period, therefore, that was not taken on record, against which writ petition was filed. The writ petition was allowed on payment of costs of Rs.5,000/- and thereafter, present temporary injunction application was decided. It is submitted that the court below considered all the facts of the case which is apparent from the impugned order itself. It is also submitted that the appellants/defendants cannot say that their reply which is joint reply of all the defendants has not been considered. Mere mentioning that no reply was filed by the defendants no.1 to 3 and 5 to 7 appears to be due to some mistake only but in fact, the entire reply which has been filed by all the defendants has been considered as there was only one joint reply. It is also submitted that the plaintiffs proved prima-facie case and the court below has granted relief against alienation of the property which is otherwise provided by the statutory provision of law.

I have considered the submissions of learned counsel for the parties and perused the reasons given by the court below.

Merely because of some inadvertent mistake in writing

the order and which has not affected the merits of the case, there is no reason to set aside the order of the trial court. Apart from it, by the impugned order, the trial court only directed the appellants not to alienate the property and which otherwise also, the appellants cannot do in view of the principle of lis-pendente.

In view of the above, I do not find any merit in this appeal and the same deserves to be dismissed.

At this stage, learned counsel for the appellant prayed that the trial court be directed to decide the suit expeditiously.

In the facts of the case, the court below is requested to decide the suit expeditiously and no unnecessary adjournment be granted.

Consequently, this appeal is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya